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APPENDIX A.

Relevant Statutory Provisions.

Sections 2 and 3 of Title I of the Railway Labor Act, as amended (48 Stat. 1186, 1189; 64 Stat. 1238; 45 U. S. C. §§152, 153) provide in part as follows:

"Section 2. • • •

"Eleventh: Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other members or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assess-

ments (not including fines and penalties uniformly required as a condition of acquiring or retaining membership): Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-paragraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement

applicable to him; Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board,' the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board

shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in any case of vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party desig-

nated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving train and yard-service employees of carriers; that workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, powerhouse

employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members five of whom shall be selected by the carriers and five by the national labor organization of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members; three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee,' to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board should be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the

awards shall be furnished to the representative parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum of which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the Adjustment Board shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of

the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

* * *

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

APPENDIX B.

Decision of the Secretary.

UNITED STATES DEPARTMENT OF LABOR

Washington 25, D. C.

IN THE MATTER of UNITED TRANSPORT SERVICE EMPLOYEES OF AMERICA, Claimant.

This matter arises under the Railway Labor Act (48 Stat. 1185, 45 U. S. C., secs. 151 *et seq.*) and involves a claim asserted by a labor organization, the United Transport Service Employees of America,[1] of the right to participate in the selection of the labor members of the National Railroad Adjustment Board.

The relevant sections of the aforementioned Act are as follows:

> *Section 3(a)* provides that "* * * the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act."
>
> *Section 3(c)* provides that "* * * the national labor organizations, as defined in paragraph (a) of this section * * * shall prescribe the rules under

[1] Hereinafter referred to as the claimant.

which the labor members of the Adjustment Board shall be selected and shall select such members."

Section 3(f) provides that "In the event of any dispute as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit the Secretary shall notify the Mediation Board accordingly * * *." The remaining portion of this section provides for the establishment by the National Mediation Board of a board of three to investigate the qualifications of the claimant union and make a final determination of its right to participate.

The issue for determination in this matter is whether the claim to participate has merit.[2]

The Act makes no provision for the procedure required on the part of the Secretary of Labor in determining whether or not a disputed claim "has merit." It would appear, however, that unless the Secretary of Labor is to duplicate the functions of the board of three appointed by the National Mediation Board, which Board has final authority to pass on a disputed claim, his duty is merely to screen claims and to decide whether the evidence presented is sufficient to entitle the claimant to a hearing before an authoritative body. I decided to hold a formal hearing to assist in my determination of this matter.

A formal hearing was held on July 23, 1946, before a Hearing Officer duly appointed by me. In addition to Mr. Willard S. Townsend, president of the claimant organization, notice of the hearing was sent to the Railway Labor Executives Association and to each of the par-

[2] It is clear that a dispute exists as to the right of the claimant to participate.

ticipating labor organizations. Mr. Townsend appeared in person and was presented by counsel. Twenty of the twenty-two participating organizations were represented by Mr. Frank L. Mulholland of Toledo, Ohio. Individual representatives appeared on behalf of the remaining labor organizations.

Testimony was offered at the hearing in support of its claim by the claimant's representative, Mr. Willard S. Townsend. Full opportunity was given to each of the participating labor organizations in the Railway Executives Association to offer evidence and argument in opposition to the claim of the United Transport Service employees. The participating labor organizations have not, however, offered any evidence which in any way contradicted the testimony offered by the claimant nor does the record disclose any fundamental respects in which claimant's testimony has been seriously contested by the participating labor organizations.[3]

Under the pertinent parts of sections 2 and 3 of the Railway Labor Act, a union would appear to be eligible to participate in the selection of labor representatives on the Board if (1) it is national in scope, (2) it is freely organized and (3) it is organized to represent crafts or classes of employees.

Whether claimant's labor organization is national in scope.—Evidence was introduced indicating that the claimant union has a membership of over 7,500, organized into about 70 locals scattered throughout the country, and that it has collective bargaining agreements with about 38 carriers totalling approximately 108,000, and operating in at least 20 states. The legislative history of the National Railway Labor Act indicates that the term

[3] It should be noted that the Examiner gave counsel for the participating labor organizations an opportunity to file a memorandum or brief in answer to the facts and arguments submitted by the claimant organization and that no brief or memorandum in answer to the arguments supporting the claimant organization's contentions was filed.

"national in scope" was used to differentiate between the union organized within a single company and those representing employees from different companies.[4] On the basis of the entire record, I find that the claimant established a prima facie case that it is an organization national in scope.

Whether claimant labor organization is freely organized.—No contention was made that the claimant is not a freely organized organization. On the basis of the entire record, I find the claimant to be a freely organized labor organization.

Whether the claimant union is organized to represent crafts or classes of employees.—The evidence indicated that the claimant union represents Red Caps, Dining Car Waiters, Cooks, Train Porters, Maids, Clerical Personnel and Laundry Workers. Claimant purports to represent 85 per cent of the railroad red cap craft in the United States.[5] I find that this evidence is sufficient to support a prima facie case to the effect that the claimant union meets the requirement that it be organized along craft or class lines.

I find, on the basis of the entire record, that the claim of the United Transport Workers of America to representation in the selection of the labor members of the Railroad Adjustment Board has merit.

L. B. SCHWELLENBACH

Signed at Washington, D. C.
this 2d day of January, 1947.

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[4] Hearings before the Senate Committee on Interstate Commerce on S. 3266, 73rd Cong., 2nd Sess. (1934), pp. 19, 156.

[5] The contention was made that the claimant is not organized to represent a craft or class on the ground that it limited its membership to Negroes. The uncontradicted evidence showed that membership in the claimant is open to all, regardless of race, and that, in fact, the claimant includes within its membership workers who are White, Negro, Nisei, and Filipino.

APPENDIX C.

Decision of the Secretary.

UNITED STATES DEPARTMENT OF LABOR

Washington 25, D. C.

IN THE MATTER
of
BROTHERHOOD OF SLEEPING CAR PORTERS,
Claimant.

This matter arises under the Railway Labor Act (48 Stat. 1185, 45 U. S. C., secs. 151 *et seq.*) and involves a claim asserted by a labor organization, the Brotherhood of Sleeping Car Porters,[1] to the right to participate in the selection of the labor members of the National Railroad Adjustment Board.

The relevant sections of the aforementioned Act are as follows:

> *Section 3 First (a)* provides that " • • • the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act."
>
> *Section 3 First (c)* provides that "the national labor organizations, as defined in paragraph (a) of this section • • • shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members."

[1] Hereinafter referred to as the claimant.

Section 3 First (f) provides that "In the event of any dispute as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit the Secretary shall notify the Mediation Board accordingly * * *." The remaining portion of this paragraph provides for the establishment by the National Mediation Board of a board of three to investigate the qualifications of the claimant union and make a final determination of its right to participate.

The issues for determination in this matter are (1) whether a dispute exists, within the meaning of Section 3 First (f), so as to make appropriate the investigation and determination by the Secretary of Labor prescribed by that paragraph in such cases, and (2) in the event the first issue is decided in the affirmative, whether the claim to participate has merit.

In the absence of any statutory provision for procedure to be followed by the Secretary in the investigation of claims to participate, and following the precedent set in the matter of the similar claim of the United Transport Workers of America,[2] a formal hearing was held on May 13, 1948, before a Hearing Officer duly appointed by the Secretary of Labor Lewis B. Schwellenbach. Notice of the hearing was sent to Mr. A. Philip Randolph, International President of the claimant, to each of the labor organizations which participate in the selection of labor members of the Adjustment Board and to the Railway Labor Executives Association. Mr. Randolph appeared in person

[2] Determined by Secretary Lewis B. Schwellenbach January 2, 1947.

and was represented by counsel. All of the participating organizations were represented by counsel except the Brotherhood of Locomotive Engineers, the Seafarers International Union of North America and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and no representative appeared for the Railway Labor Executives Association.

Testimony was offered at the hearing in support of the claimant by Mr. A. Philip Randolph and by Mr. Theodore E. Brown, Director of Research for the claimant, both on the issue of the existence of a dispute and on the merits of the claim. Full opportunity was given to all of the participating organizations to present evidence and argument in opposition to claimant's position. The participating organizations presented no evidence on either issue, but it was argued on their behalf that claimant's evidence did not establish the existence of a dispute.[3]

The Jurisdictional Issue

The facts on the basis of which a dispute is alleged to exist are substantially as follows:

On February 8, 1947, Mr. Randolph wrote to the Secretary of Labor applying for representation on the National Railroad Adjustment Board. He was advised at that time that his letter did not show the existence of a dispute such as would empower the Secretary to make a determination, and that if such a dispute existed he should submit evidence thereof to the Secretary.

On March 10, 1947, Mr. Randolph wrote to Mr. George M. Harrison, Grand President, Brotherhood of Railway

[3] At the close of the hearing, the Hearing Officer offered to reconvene the hearing within a reasonable time, if necessary, to receive evidence from the participating organizations on the merits of the claim. No such evidence has been offered. The participating organizations submitted a memorandum brief on the jurisdictional issue, after the hearing, and claimant submitted a memorandum brief in reply thereto.

and Steamship Clerks, asking the procedure to be followed in applying for representation on the Board. Mr. Harrison replied, on March 13, that the participating organizations had formed a group to carry out these functions, and he referred Mr. Randolph to Mr. A. E. Lyon, Executive Secretary of the group. Accordingly, Mr. Randolph communicated his request to Mr. Lyon. Mr. Lyon answered that the Railway Labor Executives Association did not handle or decide questions of this nature, but that he was circularizing Mr. Randolph's letter among the members of the Association. Two months later, Mr. Randolph again wrote to Mr. Lyon, asking the name of the proper agency to which to apply for representation, and requesting any available information concerning appropriate procedures to follow for this purpose. At about the same time, he also wrote to Mr. Harrison again, mentioning the correspondence with Mr. Lyon and asking the names of the officials of the participating organizations so that he might write to them applying for representation. Receiving no reply to either of these letters, he wrote to the Secretary of Labor again, recounting the above correspondence, and stating that various telephone calls made by Mr. Theodore E. Brown, claimant's Research Director, to the Labor Department, the National Mediation Board and Mr. Lyon, had been similarly unproductive of information. He therefore requested a determination by the Secretary pursuant to Section 3 First (f) of the Railway Labor Act. The originals or copies of all the letters here referred to were submitted as exhibits at the hearing.

Mr. Brown testified at the hearing with respect to the telephone calls mentioned in Mr. Randolph's letter to the Secretary of Labor. He said that at the suggestion of a representative of the Labor Department he had called Mr. Robert Cole, Secretary of the National Mediation Board, on the telephone, and had been informed

by Mr. Cole that Mr. Lyon, in his capacity as Executive Secretary of the Railway Labor Executives Association, could supply all necessary information for securing participation. Mr. Brown then said that he had called Mr. Lyon, and had been told by him that the Railway Labor Executives Association as such did not choose the labor members of the Adjustment Board, although its members did. Mr. Brown stated that he had not received from Mr. Lyon any direct information as to the specific procedures used by the participating unions in selecting Board labor members.

At the hearing and in a brief the position of the participating organizations was that they had not been notified in any proper way of the desire or the application of claimant for participation in the selection of labor members of the Board; that they had taken no adverse action and could not predict what action would be taken if application were properly made, and that accordingly no dispute could be said to exist and the proceeding was not properly before the Secretary of Labor.

It is clear upon the record that the merits of the instant claim have not been controverted; indeed, the participating organizations seem to have carefully avoided taking any position on this matter. But it does not seem to me that the word "dispute" as used in the Act must be narrowly construed to denote only a controversy on the merits. If so narrow a construction were required, it would be possible for the participating organizations, by refraining from any action on applications to be admitted to participation, effectively to prevent any new organizations from participating. It seems obvious that Section 3 First (f) did not contemplate such a stalemate. On the contrary, this Section expressly provides a means for securing action on a claim to participate when such action is not voluntarily forthcoming from the participating organizations.

Nor is the Secretary bound to enforce a strict rule of "exhaustion of administrative remedies" against a claimant when it is reasonably apparent that this would only cause further delay with no assurance of a determination on the merits. It should be noted that after making inquiries by letter and telephone over a period of almost a year Mr. Randolph had not secured any information as to the identity of the parties to whom application should be made, or the procedure to be followed. Counsel for the participating organizations suggested that Mr. Randolph should have written to each such organization individually. I cannot regard his failure to do so as jurisdictional so far as this proceeding is concerned. He had reason to believe, on the basis of Mr. Lyon's letter to him, that all but the few participating organizations which have no representative in the Railway Labor Executives Association had been informed of his application.[4] Furthermore, there is no procedure established either in the Act or by regulations[5] for the making of such application. Under the circumstances, to insist that Mr. Randolph now personally communicate with each of the participating organizations before seeking the aid of the Secretary of Labor would seem unnecessarily legalistic.

I therefore determine that a dispute exists, within the meaning of Section 3 First (f) of the Railway Labor Act, and that determination by the Secretary of Labor as to whether the instant claim has merit is appropriate at this time.

Merit of the Claim

The eligibility of a union for participation in the

[4] Counsel for the organizations represented in the Association stated at the hearing that these organizations had in fact received copies of Mr. Randolph's letter from Mr. Lyon.

[5] The participating organizations would appear to have power, under Section 3 First (c) of the Act, to promulgate appropriate regulations for this purpose.

selection of labor members of the National Railroad Adjustment Board, under Sections 2 and 3 of the Act, depends on (1) whether it is national in scope, (2) whether it is freely organized and (3) whether it is organized to represent crafts or classes of employees.

Whether claimant is national in scope. On this question, the uncontradicted evidence indicates that claimant has a total membership of some 15,000 distributed among 19 local unions with members in all but 3 or 4 States. For administrative purposes the International organization is divided into 5 geographic zones, having their headquarters in New York City, Detroit, Chicago, St. Louis and Oakland, California, respectively. Claimant has an international charter from the American Federation of Labor. It has collective bargaining agreements with the Pullman Company, and with about 27 other carriers, apart from an agreement in process of negotiation, at the time of the hearing, with the Atchison, Topeka and Santa Fe Railroad. It also appears that in the ten years from 1937 through 1947 claimant progressed the second largest number of cases through the Third Division of the National Railroad Adjustment Board[6] of all the labor organizations with membership falling within the jurisdiction of that Division.

I find, on the basis of the entire record, that claimant has established a prima facie case that it is national in scope within the meaning of the applicable provisions of the Act.

Whether claimant is freely organized. No contention has been made that claimant fails to meet this requirement.

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[6] All disputes involving members of claimant would come before the Third Division of the Board. Under Section 3 First (h), this division has jurisdiction of disputes involving "station, tower, and telegraph employees, train dispatchers, station and store employees, signalmen, sleeping car conductors, sleeping car porters, and maids and dining car employees."

I find on the basis of the entire record that claimant is a freely organized labor organization.

Whether claimant is organized to represent crafts or classes. The record indicates that claimant represents the following crafts or classes of employees: Pullman car porters, maids, attendants and bus boys; sleeping, parlor and buffet car porters employed by the Canadian Pacific Railway[7] and train porters, chair attendants and coach porters employed by the other carriers with which claimant has collective bargaining agreements. Claimant is also seeking to represent certain classes of Pullman maintenance employees, but it does not appear that it has any agreements covering such employees.

I find, on the basis of this evidence, that claimant has established a prima facie case that it is organized to represent crafts or classes of employees.

On the basis of the entire record, I find that the claim of the Brotherhood of Sleeping Car Porters to participate in the selection of labor members of the National Railroad Adjustment Board has merit.

L. B. SCHWELLENBACH
Secretary of Labor

Signed at Washington, D. C.
this 8th day of September, 1948.

[7] At the hearing, counsel for claimant made it clear that the claim is not in any way based on the Canadian membership of the Brotherhood employed in Canada and outside the jurisdiction of the Board.

APPENDIX D.

Decision of the Secretary.

UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF LABOR

Office of the Secretary

IN THE MATTER of THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION, Inc.

The American Railway Supervisors Association, Inc., a labor organization, has made claim that it is entitled to participate in the selection and designation of the labor members of the National Railroad Adjustment Board under the provisions of the Railway Labor Act (48 Stat. 1185; 45 U. S. C., Secs. 151 *et seq.*).

The pertinent provisions of the Railway Labor Act are as follows:

> Section 3 First (a): "That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act."
>
> Section 3 First (c): "The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other

medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board."

Section 3 First (f): "In the event of any dispute as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit the Secretary shall notify the Mediation Board accordingly * * *."[1]

The Act makes no provision for the procedure to be followed by the Secretary of Labor in his investigation and determination of whether the claim of a labor organization, in the event a dispute arises as to its right to participate in the designation and selection of the labor members of the Adjustment Board, has merit. In the absence of any such statutory provision, and following the precedent set in the matter of earlier and similar claims, a hearing was held on March 9, 1953, before a Hearing Officer duly appointed by the Secretary of Labor. In addition to Mr. J. P. Tahney, Grand President of The American Railway Supervisors Association, Inc., hereinafter referred to as the claimant association, notice of the hearing was sent to the Railway Labor Executives

[1] The remaining portion of this subsection provides for the establishment by the National Mediation Board of a board of three to investigate the qualifications of the claimant union and make a final determination of its right to participate.

Association and to each of the labor organizations now participating in the selection of the labor members of the Adjustment Board.

Mr. Tahney appeared at the hearing in person on behalf of the claimant association and offered his testimony together with certain documentary exhibits, not only with respect to the merits of the claim to the right to participate, but also upon the issue of the existence of a dispute. Mr. C. M. Mulholland appeared as counsel on behalf of the Railway Labor Executives' Association and on behalf of twenty-one, or all but a few, of the participating labor organizations.[2] The Brotherhood of Locomotive Engineers was represented by Mr. Clifford W. Kealey and the Order of Railway Conductors of America was represented by its vice president and legislative representative, Mr. W. D. Johnson. No evidence was offered by the participating organizations on the issues. Such information as they did develop was confined to that

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[2] These organizations are:
American Train Dispatchers' Association
Brotherhood of Maintenance of Way Employees
Brotherhood of Railroad Signalmen of America
Brotherhood Railway Carmen of America
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
Brotherhood of Sleeping Car Porters
Hotel & Restaurant Employees and Bartenders International Union
International Association of Machinists
International Brotherhood of Blacksmiths, Drop Forgers and Helpers
International Brotherhood of Boilermakers, Iron Ship Builders & Helpers of America
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
International Longshoremen's Association
National Marine Engineers' Beneficial Association
National Organization Masters, Mates & Pilots of America
Order of Railroad Telegraphers
Railroad Yardmasters of America
Sheet Metal Workers' International Association
Switchmen's Union of North America
Railway Employees' Department A. F. of L.
Brotherhood of Locomotive Firemen and Enginemen
Railway Labor Executives' Association

elicited by their representatives, principally Mr. Mulholland, in their examination of Mr. Tahney, the only witness to testify and to supply factual data. Pursuant to leave granted at the close of the hearing, a memorandum brief was filed by Mr. Mulholland on behalf of the organizations represented by him, to which a reply brief has been filed by Mr. Tahney on behalf of the claimant association. The briefs are primarily directed to the question of whether or not the claimant association is a labor organization "national in scope" within the meaning of the Railway Labor Act.

The participating organizations have made no contention that the right of the claimant association to participate is not in dispute within the meaning of Section 3 First (f) of the Act.[3] The existence of a dispute prior to and at the time of the hearing is amply shown by the exchange of correspondence between the claimant association and the group of organizations known as the Nationally Organized Railway Labor Organizations Qualified to Participate in the Formation of the National Railroad Adjustment Board, originating with the letter addressed by Mr. Tahney to Mr. A. E. Lyon, secretary of the named group of organizations, under date of November 30, 1949, and ending with his letter to Mr. G. E. Leighty, Chairman of the group, dated April 23, 1952.[4] Mr. Tahney's letter of November 30, 1949, expressly requested recognition of the claimant association as a participating organization in the selection of the labor

[3] At the hearing, Mr. Mulholland made it clear that he was then taking no position on the claim, inasmuch as he did not know what the position of the participating organizations was or would be until a later date, but that he did wish to protect their interest on the record in the event they decided to oppose the claim (Tr. pp. 10, 80-1). Later, Mr. Mulholland filed a brief on behalf of most of the labor organizations participating in the selection of the labor members of the National Railroad Adjustment Board and the Railway Labor Executives Association controverting the merit of the claim.

[4] The exchange of correspondence referred to is marked Association's Exhibit A 1-10.

members of the Adjustment Board. It is quite apparent from the correspondence that followed that almost two and one-half years elapsed without determinative action by the group upon the application of the claimant association before the claimant association concluded that, in view of such inaction, it would proceed to avail itself of the means for securing action provided in the Railway Labor Act.

In the determination of the claim of the Brotherhood of Sleeping Car Porters on September 8, 1948, the Secretary of Labor considered a situation similar to this and expressed the opinion, in which I concur, that the word "dispute" as used in the Act was not to be so narrowly construed as to make it possible for the participating agencies effectively to prevent new organizations from participating by merely refraining from any action on application for admissions to participation.

On the basis of the entire record, I find that a dispute exists, within the meaning of Section 3 First (f) of the Railway Labor Act, requiring a determination at this time as to whether the instant claim has merit.

By the terms of Section 3 First (a) of the Act, a labor organization is entitled to participate in the selection of the National Railroad Adjustment Board if it is national in scope and organized in accordance with the provisions of Section 2 of the Act.

As to whether the claimant association is national in scope, the following facts appear to be uncontroverted. The claimant association was organized on November 14, 1934, about four months after the Act was amended on June 21, 1934. The offices of its Grand Lodge are located at 53 West Jackson Boulevard, Chicago, Illinois. It has ten full-time employees and an annual salary expenditure of $66,000. As of the date of the hearing, 88 charters had been issued to 78 lodges located in various parts of the United States and to a limited extent in Canada.

As of March 1, 1953, the claimant association had negotiated a total of 109 collective bargaining agreements with 71 carriers operating in all sections of the country. The total mileage of the carriers represented, as last computed and shown in the claimant association's Exhibit B, is 113,153. No less than 41 of the 71 carriers in contractual relationship with the association are Class I carriers which, together with the contract with the Pullman Company, account for 74 of the total 109 contracts negotiated. The 41 Class I carriers which have contracted with the association constitute 30 per cent of the 136 Class I carriers listed on Table 12-A of the Eighteenth Annual Report of the National Mediation Board.

The claimant association has a total dues-paying membership of 8,088. According to Mr. Tahney, it is not an overstatement to say that the number of positions represented by the claimant association would be approximately 9,500.

The primary objective of the claimant association, as stated in its Constitution and General Laws (Article I, Section 3[g]) is:

> "To unite and combine all subordinate officials of any and all carriers engaged in interstate commerce, which subordinate officials are subject to the Carriers' continuing authority to direct and control the manner in which their services shall be rendered; * * *"

The foregoing provision of the association's constitution was patterned after the language of Section 1, fourth paragraph, of the Act which reads, in part, as follows:

> "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who per-

forms any work defined as that of an employee *or subordinate official* in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders * * *." (Italics supplied.)

Since its organization the claimant association has taken an active part in having the following groups of subordinate officials given recognition or continued recognition by the National Mediation Board as separate crafts or classes of employees entitled to representation under the Railway Labor Act:

Mechanical department foremen and/or supervisors of mechanics

Subordinate officials maintenance of way and structures

Technical engineers, architects, draftsmen and allied workers.

The subordinate officials in the craft or class of Mechanical Department Foremen and/or Supervisors of Mechanics constitute by far the majority of the claimant association's membership, and it is on their behalf that the claimant association has negotiated the greatest number of agreements through collective bargaining. As of March 1, 1953, there were a total of 68 agreements applicable to mechanical foremen, covering a total of 6,600 dues-paying members of the claimant association. It is estimated that the total number of positions which the claimant association is authorized to represent in this craft or class would easily reach 7,000. Such representation extends throughout the country. The claimant association, for example, represents the mechanical

foremen of the Pullman Company on a nationwide basis. Table 8 of the National Mediation Board Report (p. 35) shows that as of June 30, 1952, the claimant association's representation of the one craft or class of supervisors of mechanics alone constituted 45 per cent of the total mileage of the 136 Class I or "principal" carriers "on which employees were represented by organizations."

Next to the mechanical foremen in the number of agreements negotiated by the claimant association is the craft or class of "Subordinate Officials Maintenance of Way and Structures." The approximate number of positions which the association claims that it is authorized to represent in the group is 1,700, making a total of approximately 8,700 positions represented by the association in the two crafts or classes so far identified.

On the basis of figures cited by the claimant association indicating that there are 3,387 employees in the craft or class of Subordinate Officials Maintenance of Way and Structures and close to 11,000 employees in the craft or class of Mechanical Department Foremen and/or Supervisors of Mechanics, or a total of 14,371 employees or positions subject to representation under the Railway Labor Act in both crafts or classes, the 8,700 positions represented by the claimant association constitutes over 60 per cent of the total positions. Broken down by craft or class, the claimant association represents 50 per cent of the subordinate officials in the maintenance of way department and about 64 per cent of the mechanical department foremen and/or supervisors of mechanics.

The remaining 17 agreements negotiated by the claimant association, accounting for the remaining 800 positions represented, are divided in their application to the following groups of subordinate officials: technical engineers, yardmasters, storekeepers, station masters, wire chiefs, special agents, bridge foremen and dining car stewards.

As the brief of the participating organizations points out, the Railway Labor Act does not define the phrase "national in scope" nor prescribe any specific standards or tests for its proper interpretation. Aside from the indication that the term "national in scope" was used to differentiate between a union organized within a single company or carrier and those representing employees of different companies,[5] there is nothing in the legislative history of the Act of assistance in considering the question of whether a labor organization is national in scope.

The participating organizations urge that in the absence of any guides in the statute and in its legislative history, the most logical approach to the question of whether a labor organization is national in scope is to look to the conditions existing at the time the statute was enacted and the purpose which Congress sought to accomplish. Asserting that inasmuch as the National Railroad Adjustment Board was established to further the process of collective bargaining as it was then being carried on in the railroad industry and to provide on a national basis for the adjustment of disputes unadjusted in conference between representatives of labor and management, the participating organizations argue that in providing for the selection of members of the Adjustment Board by labor organizations national in scope, Congress had in mind the past practice of collective bargaining in the industry and was referring to labor organizations whose structure and function corresponded to those which had perfected the system of collective bargaining which Congress desired to supplement and whose activities made them a definite factor in the industry as a whole. It is contended that the claimant association, in order to meet seven enumerated characteristics of the

[5] Hearings before the Senate Committee on Interstate Commerce on S. 3266, 73rd Congress, 2nd Session (1934), pp. 19, 156.

labor organization which Congress assertedly had in mind when it used the phrase "national in scope," must

(1) Be a "craft or class" organization not purporting to represent employees in more than one craft or class;

(2) Have the maturity and stability to enable it to bargain effectively for the employees it represents;

(3) Possess the economic strength which makes resort to the Adjustment Board a necessary means of disposing of disputes to prevent interruptions to commerce and the operations of the carriers;

(4) Successfully negotiate standard rules and working conditions;

(5) Be composed of members among whom there is a community of interest;

(6) Bargain collectively on a national basis in national movements affecting all carriers simultaneously; and

(7) Represent the vast majority of the employees in the crafts or classes which it purports to represent.

In the two earlier cases in which the question of whether a claimant labor organization is national in scope has been before the Secretary of Labor,[6] consideration was given to such factors as the geographical area in which its representation extends, the number of employees represented, the number of agreements, the number of carriers with whom agreements are held, and the mileage of such carriers. These factors are relevant by virtue of the plain and unambiguous language of the statute. Most, if not all, of the points upon which

[6] *In the Matter of United Transport Service Employees of America*, determined January 2, 1947; and *In the Matter of Brotherhood of Sleeping Car Porters*, determined September 8, 1948.

the participating organizations rely in contending that the claimant association is not national in scope are not responsive to the question and are indicative of an effort on the part of the participating organizations to read into the statute prerequisites to the right of participation which Congress presumably did not see fit to impose. An especially appropriate observation was made by the Supreme Court of the United States in *National Labor Relations Board v. Highland Park Manufacturing Co.*, 341 U. S. 322: "If Congress intended geographic adjectives to have a structural connotation or to have other than their ordinarily accepted meaning, it would and should have given them a special meaning by definition."

Had Congress, for example, intended that national labor organizations which did not confine their representation to a single craft or class were not eligible to participate in the selection of the labor members of the Adjustment Board, it may be presumed that it would have so indicated. That some of the presently participating organizations extend their representation to more than one craft or class is an accepted fact. The overlapping of jurisdiction among these organizations is not, in all cases, limited to fringe employees whose proper classification is subject to some doubt. The claimant association is to be considered no less a craft or class organization because it represents, in varying degrees, more than one craft or class of subordinate officials.

To construe the term "national in scope" as urged by the participating organizations would be contrary to the rule laid down by the Supreme Court that where the words of a statute are plain, the Court is not at liberty to add additional and qualifying terms. *Osaka Shosen Line v. United States*, 300 U. S. 98, 101. Even if it can be said that the argument of the participating organizations casts some doubt as to what Congress had

in mind in its use of the term, the decision of the Supreme Court in the last cited case is also authority for the rule that where legislative intent has been expressed in plain and unambiguous words, the Courts must apply and enforce the statute as written, the language is conclusive, and there is no need to resort to construction or to the legislative history.

Except to state that the claimant association appears to represent a majority of mechanical foremen, the craft or class in which it is "majoring," it would serve no useful purpose to deal specifically with each of the other points raised by the participating organizations and the answer given thereto by the claimant organization. The general observation may be made that the claimant association has acquired and achieved a character and standing comparing favorably with the accomplishments of labor organizations whose right to participate has been recognized. In any event, the claimant association has amply shown that it is a labor organization "national in scope," as the term is used in the Act without limitation or restriction (save to the extent heretofore indicated), and I so find.

The participating organizations do not contend that the claimant association is not organized in accordance with the provisions of Section 2 of the Act. On the basis of the record before me, I find that it is so organized, i. e., that it is freely organized and that it is organized to represent crafts or classes of employees.

The claim of the American Railway Supervisors Association, Inc., to participate in the selection of labor members of the National Railroad Adjustment Board is accordingly found to have merit.

MARTIN P. DURKIN
Secretary of Labor

Signed at Washington, D. C.,
this 8 day of Sept., 1953.

APPENDIX E.

Decision of the Board.

RAILROAD RETIREMENT BOARD

JURISDICTIONAL DOCKET No. 29

IN THE MATTER
of
The Status of THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION, Inc., as an "Employer" Under the Railway Retirement Act and the Railroad Unemployment Insurance Act.

Statement

On October 25, 1938, the President of The American Railway Supervisors Association, Inc., hereinafter called the Association, was informed of the Board's ruling that the Association was not an "employer," within the meaning of Section 1 (a) of the Railroad Retirement Act of 1937, but was a "railway labor organization" not an employer, service to which is creditable as "employee representative" service in accordance with the provisions of Section 1 (b) of that Act.[1]

[1] Section 1 (b) of the Act provides in part as follows:

The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in section 1 (a) who before or after the enactment date was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

The ruling with respect to its "employer" status was protested by the Association and from time to time evidence has been introduced in support of its position that it is a railway labor organization "national in scope," organized in accordance with the Railway Labor Act, as amended. On March 12, 1951, the General Counsel informed the Association of his opinion that evidence submitted by the Association was not sufficient to rebut the presumption arising under Section 202.15(a) of the Board's Regulations, 20 C.F.R. [that it is not national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended] in that such evidence does not show that the reasons for the Association's failure to establish a right to participate in the selection of labor members of the National Railroad Adjustment Board have no relation to its being a labor organization, national in scope, and organized in accordance with the provisions of the Railway Labor Act, as amended.

Under date of August 28, 1951, the Association requested that the General Counsel's opinion and all the evidence of record in the case be reviewed by the Board, and that a decision be rendered by the Board as to the Association's status as an employer under the Railroad Retirement Act. On January 9, 1952, a hearing was held before the Board at which the Association presented evidence and argument in support of its position.

It is the Association's contention that it is national in scope because it was "set up and established for the purpose of operating on a nation-wide basis," and that its "record of effective collective bargaining and number of agreements in effect on a nation-wide basis" shows that it is "national in scope." It is claimed that the Association is the largest organization representing "subordinate officials" in the railroad industry, that it has "more employees, contracts and represent[s] more posi-

tions" than several railway labor organizations that have been recognized as "employers" by the Board, and that its membership "is spread throughout every state within the nation." It is pointed out that the National Mediation Board, in certain tables in its annual reports, identifies the Association as a "National organization" rather than a system association or local union; and that under the provisions of the Railway Labor Act, the Association receives the services of the National Mediation Board and the National Railroad Adjustment Board, and has "handled more cases on the Fourth Division of the National Railroad Adjustment Board during many years since 1934 than those individuals who enjoy labor membership." It is also argued that the present Association has the same general jurisdiction as the International Association of Railway Supervisors, an organization no longer in existence, which was accorded the right to participate in the selection of labor members of the United States Railroad Labor Board under the Transportation Act of 1920.

The following facts with respect to the organization and operations of the Association are revealed by the evidence of record:

The Association, composed of railroad subordinate officials,[2] was organized on November 14, 1934, and was incorporated on July 24, 1935, under the laws of the State of Illinois. The purpose of the Association, as set forth in Article I of its Constitution and General Laws, is to organize all subordinate officials of all carriers and to represent them in collective bargaining with respect to their wages, hours, and working conditions. The Association states, and there is no evidence to the contrary, that no carrier has ever exercised interference, influence or coercion for the benefit of the Association in

[2] Article XV of the Association's Constitution and General Laws.

connection with its designation as a representative of carrier employees. The Constitution and General Laws (Article XVI) contain provisions for dues, fees and assessments for the support of the Association.

Starting with 28 members, the Association has grown gradually, and, according to its annual report for the fiscal year ended August 31, 1951, it had total membership of 7,338, represented by 96 contracts on 67 railroads having a total mileage of 113,153.[3] In addition to ten full-time employees, the Association has approximately 50 part-time employees (general chairmen) who are also carrier employees.

The Association asserts that no attempt was made by it or in its behalf, prior to 1946, to establish a right of participation in the selection of members of the National Railroad Adjustment Board. However, it has submitted copies of correspondence, showing that on January 29, 1946, the Chairman of the Fourth Division of the National Railroad Adjustment Board suggested to two "absentee" members that they withdraw and join him in recommending that the Association and the Railroad Yardmasters of America be appointed in their stead; and that, on November 30, 1949, Mr. A. E. Lyon, Secretary of the "Nationally Organized Railway Labor Organizations Qualified to Participate in the Formation of the National Railroad Adjustment Board," had been formally petitioned by the Association to "direct the participating members on the Fourth Division of the National Railroad Adjustment Board to recognize [the] Association in the selection of any future labor members." The Association stated that, notwithstanding its petition, representatives of the Railroad Yardmasters of America and the Railway Patrolmen's International Union, were chosen

[3] At the hearing before the Board, the Grand President of the Association said the membership at that time was 7691 and the number of contracts was 100.

when two new labor members were selected, and that the Association had been informed by Mr. Lyon that its application had been considered at a meeting of the "nationally organized railway labor organizations" in January, 1951, but a motion was adopted to postpone action until some future meeting of the group, and "The subject remains on the agenda for further consideration and will be brought up when another meeting is held." Because of this delay, the Association stated that it believed the issue was being evaded and that the "Nationally Organized Railway Labor Organizations Qualified to Participate in the Formation of the National Railroad Adjustment Board" had "no intention of even giving • • • a definite answer, either one way or the other, as to the recognition" the Association is "rightfully entitled to." The Association alleges, but has submitted no evidence to support its views, that competing labor organizations which do enjoy the right of participation in the selection of labor members of the National Railroad Adjustment Board have exerted their influence against the Association in its efforts to secure the same right.

Discussion

Section 1(a) of the Railroad Retirement Act of 1937, as amended,[4] provides in part as follows:

> • • • The terms "employer shall also include • • • railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, • • •

[4] As well as Section 1(a) of the Railroad Unemployment Insurance Act, as amended; see also 20 C.F.R. 301.4.

Section 3 First (a) of the Railway Labor Act, as amended, wherein provision is made for the establishment of the National Railroad Adjustment Board, provides in part:

> • • • the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have ~~been or may be organized in accordance~~ with the provisions of section 2 of this Act.

Except that the Railroad Retirement Act specifies "railway" labor organizations, its requirements are the same as those of Section 3 First (a) of the Railway Labor Act in that the labor organizations must be (1) national in scope and (2) organized in accordance with the provisions of the Railway Labor Act, as amended.

It has been established to the satisfaction of the Board, on the basis of evidence of record, that the Association is a "railway labor organization," within the meaning of the Act. The evidence also shows that the Association has been authorized and designated as the collective bargaining representative of employees on a number of railroads. Investigation has not disclosed any indication of interference, influence, or coercion by any carrier for the Association's benefit, and from the Association's purpose, the nature of its activities, the provisions in its Constitution and General Laws for its financial support, and the manner in which its negotiations with carriers have been conducted, it may be inferred that such interference, influence, or coercion does not exist. These facts and inferences have been recognized by the Board in ruling that the Association is a railway labor organization to which "employee representative" service could be rendered. Therefore, the question here to be resolved in determining whether the Association is an "employer"

is whether it is "national in scope," and "organized in accordance with the provisions of the Railway Labor Act, as amended," within the meaning of the Act and the Board's Regulations.[5] The section of the Board's Regulations relating to this question is Section 202.15.

In adopting Section 202.15, the Board took into consideration the practically identical language of Section 1(a) of the Railroad Retirement Act and Section 3 First (a) of the Railway Labor Act and the desirability of avoiding conflicting determinations under the two Acts. Recognizing that the primary interest of the labor organizations, i. e., the representation of their members in collective bargaining, is under the Railway Labor Act, it was reasoned that the establishment of a right to participate in the selection of members of the National Railroad Adjustment Board would be a normal objective of an organization which actually is "national in scope" and "organized in accordance with the provisions of the Railway Labor Act, as amended." Such reasoning gives rise to a presumption that a labor organization which has established such a right of participation is "national in scope" and "organized in accordance with the provisions of the Railway Labor Act, as amended." On the other hand, the fact that a labor organization doing business under the Railway Labor Act has not established that right leads to the presumption that it is not "national in scope" and "organized in accordance with the provisions of the Railway Labor Act, as amended." The Board has therefore incorporated these presumptions in Section 202.15 (a) of its Regulations, quoted below:

> An organization doing business on or after June 21, 1934, which establishes, in accordance with (1), (2), or (3) of this paragraph, a right, under sec-

[5] Established pursuant to Section 10(b)4 of the Railroad Retirement Act, which authorizes the Board to "establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of" the Acts.

tion 3 "First" (a) of the Railway Labor Act, as amended (48 Stat. 1189; 45 U.S.C. 153 "First" (a)), to participate in the selection of labor members of the National Railroad Adjustment Board, will be presumed, in the absence of clear and convincing evidence to the contrary, to be, from and after the date on which such right is thus established, a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Such organization can establish that it is an employer by establishing, in accordance with paragraph (b) of this section, that, as a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, it is a "railway" organization. An organization, doing business on or after June 21, 1934, which has not established such a right of participation, will be presumed not to be a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, and such presumption can be rebutted only by clear and convincing evidence satisfactory to the Board showing that the reasons for the organization's failure to establish such a right have no relation to its being a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Only after such presumption has thus been rebutted will further evidence as to whether the organization is an employer be considered. (The establishment or nonestablishment of such a right of participation will not raise any presumption as to whether an organization is, or is not, a "railway" organization. The existence of this qualification shall be determined in accordance with para-

graph (b) of this section.) An organization will have established such a right or participation if:

(1) It has in fact participated in the selection of labor members of the National Railroad Adjustment Board and has continued to participate in such selection; or

(2) It has been found, under section 3 "First" (f) of the Railway Labor Act, as amended (48 Stat. 1190; 45 U.S.C. 153 "First" (f)), to be qualified to participate in the selection of labor members of the National Railroad Adjustment Board; or

(3) It is recognized by all organizations, qualified under subparagraphs (1) or (2) of this paragraph, as having the right to participate in the selection of labor members of the National Railroad Adjustment Board.

There is no claim or evidence that the Association has ever established the right to participate in the selection of members of the National Railroad Adjustment Board. In fact, the Association has complained of its inability to obtain a decision on its right so to participate. It will be noted that the Regulations, recognizing that an organization doing business on or after June 21, 1934 (the enactment date of the Railway Labor Act, as amended), might actually be national in scope and organized in accordance with the provisions of the Railway Labor Act without having established a right to participate in the selection of labor members of the National Railroad Adjustment Board, provide that the presumption [that an organization which has not established such a right is not national in scope and thus organized] can be rebutted by clear and convincing evidence satisfactory to the Board, showing that the reasons for the organization's failure to es-

tablish such a right have no relation to the question of its being a labor organization "national in scope" and "organized in accordance with the provisions of the Railway Act, as amended."

Most of the Association's arguments in support of its position have no relation to the *reasons* for its failure to establish a right of participation in the selection of labor members of the National Railroad Adjustment Board. It is claimed that the Association was "set up and established for the purpose of operating on a nation-wide basis." This, of course, indicates merely an objective to become national in scope, but does not show that its aim has been achieved. When evidence submitted by the Association with respect to the size of the organization is viewed in the light of Table 8 of the National Mediation Board's annual report for the fiscal year ended June 30, 1951, it is seen that actually the Association is the representative, in all except one class, on only a negligible percentage of the total mileage covered by the table, while in the case of the largest group, supervisors of mechanics, the Association is the representative on only two-fifths of the total mileage.[6]

Also unrelated to the question at issue are other contentions of the Association. It is claimed that the Association is "national in scope" because it has received

[6] Table 8, which is entitled, "Number and mileage of principal carriers by railroad where employees are represented by various labor organizations, by crafts or classes, June 30, 1951," sets forth certain figures with respect to representatives on 136 carriers by railroad whose aggregate mileage is 253,235. According to the table, the Association represented yardmasters on four carriers having total mileage of 10,765, or 4% of the aggregate mileage of the carriers represented in the table; wire chiefs and station masters on one carrier with mileage of 7,968, or 3% of the aggregate mileage; roadmasters on two carriers having total mileage of 9,757, or 4% of the aggregate mileage; technical employees on six carriers having total mileage of 22,484, or 9% of the aggregate mileage; subordinate officials in Maintenance of Way and Structures Department on nine carriers having total mileage of 24,710, or 10% of the aggregate mileage; foundry employees on one carrier with mileage of 7,577, or 3% of the aggregate mileage; and supervisors of mechanics on 30 carriers having total mileage of 100,758, or 40% of the aggregate mileage.

the services of the National Mediation Board and the National Railroad Adjustment Board; however, the services of those agencies are not restricted to labor organizations, national in scope. No significance can be attached to the fact that in certain tables in its reports the National Mediation Board designates the Association as a "National organization," since this appears to be merely a means of designating all organizations which are not confined to one system or locality. Nor does the fact that the International Association of Railway Supervisors was accorded the right under the Transportation Act of 1920 to participate in the selection of Labor members of the United States Railroad Labor Board, establish for the present Association a similar right under the Railway Labor Act, particularly since there was no "national in scope" requirement for participation under the Transportation Act.[7]

The evidence and arguments which have been presented are not sufficient to establish that the Association meets the requirements of the Board's Regulations, quoted above, in that they do not show clearly and convincingly that the reasons for the Association's failure to establish the right of participation in the selection of labor members of the National Railroad Adjustment Board "have no relation to its being a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended." The Association's allegation that influence of rival organizations is responsible for its failure to gain the recognition it seeks is not supported by evidence. No other *reasons* for such failure have been advanced; in fact, the Association's efforts to obtain recognition as a participating

[7] Section 304 of the Transportation Act of 1920, provided for the establishment of a Board to be known as the Railroad Labor Board, to be composed of nine members, including three members described as a "labor group, representing the employees and subordinate officials of the carriers."

organization, from those labor organizations which do enjoy such right of participation, have been inconclusive up to this point, and the Association apparently has not attempted to press its claim by seeking the intervention of the Secretary of Labor, as provided for in Section 3 First (f) of the Railway Labor Act.[8]

Findings of Fact

1. The American Railway Supervisors Association, Inc. has not established the right under Section 3, First (a) of the Railway Labor Act to participate in the selection of labor members of the National Railroad Adjustment Board.

2. The Association has not submitted clear and convincing evidence showing that the reasons for its failure to establish the right to participate in the selection of labor members of the National Railroad Adjustment Board have no relation to its being a labor organization, national in scope, and organized in accordance with the provisions of the Railway Labor Act, as amended.

3. The Association has, therefore, failed to rebut the presumption, under Section 202.15(a) of the Board's Regulations, that it is not a labor organization national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended.

4. The Association, having failed to rebut that presumption, cannot be deemed to be "a railway labor or-

[8] Section 3 First (f) provides for the investigation by the Secretary of Labor, in case of a dispute, of the claim of a labor organization desiring participation and, if such claim is deemed to have merit, for the appointment by the Mediation Board of an investigating board composed of a representative selected by the national labor organizations duly qualified to participate in the selection of members of the National Railroad Adjustment Board, a representative designated by the claimant, and a neutral representative designated by the Mediation Board, the findings of such investigating board to be final and binding.

ganization, national in scope, and organized in accordance with the provisions of the Railway Labor Act, as amended," within the meaning of the Act and the Board's Regulations.

Conclusions of Law

The American Railway Supervisors Association, Incorporated, is not an "employer," within the meaning of the Railroad Retirement Act of 1937, as amended. It is likewise not an "employer" within the meaning of the Railroad Unemployment Insurance Act, as amended, the definition of "employer" in that Act being identical with the definition in the Railroad Retirement Act.

(Signed) W. J. KENNEDY, *Chairman*,
(Signed) F. C. SQUIRE, Member,
(Signed) HORACE W. HARPER, Member.

APPENDIX F.

Correspondence Dealing With UROC'S Attempts to Certify a Dispute Under Sec. 3, First (f).

July 22, 1954

Hon. James Mitchell,
Secretary of Labor,
Department of Labor,
Washington 25, D. C.

Dear Sir:

The United Railroad Operating Crafts, a railway labor union National in Scope, is desirous of being recognized for the purpose of participating in the selection of the labor members of the National Railroad Adjustment Board.

We would appreciate your proceeding to so designate us at your earliest convenience. Any information that you will require from us will be forthcoming upon request.

Sincerely

HARRY C. JOHNSON
General Sec'y-Treas.

HCJ/mk
oeiu-28-afl

U. S. DEPARTMENT OF LABOR

OFFFICE OF THE SECRETARY

Washington

July 29, 1954

Mr. Harry C. Johnson
General Secretary-Treasurer
United Railroad Operating Crafts
608 South Dearborn
Chicago 5, Illinois

Dear Mr. Johnson:

This is in reply to your letter requesting that the United Railroad Operating Crafts be recognized as a labor organization eligible to participate in the selection of labor members of the National Railroad Adjustment Board.

The determination of the qualifications of your organization in this matter must follow the procedure specified in Section 3 of the Railway Labor Act. I am enclosing a copy of the Act for your convenient reference. You will note that under Section 3 First (f), investigations of the merit of claims to participate are conditioned on there being a dispute of such claims.

If your organization will submit evidence relating to the existence of a dispute in this matter, I will be glad to give your request for an investigation further consideration. It would also be necessary for you to submit detailed facts regarding your organization before a determination could be made of the merits of your claim to participate.

Yours very truly,

JAMES MITCHELL
Secretary of Labor

Enclosure

August 27, 1954

Mr. James Mitchell
Secretary of Labor
U. S. Department of Labor
Washington, D. C.

Dear Mr. Mitchell:

Thank you for your letter of July 29, 1954 addressed to Mr. Harry C. Johnson, General Secretary-Treasurer of this organization in reply to his letter of July 22, 1954 wherein he contacted you relative United Railroad Operating Craft's participating in the selection of the labor members of the National Railroad Adjustment Board.

There are several points which are not quite clear to me and I would appreciate your advice on same.

Section 3 (h), First division states: "This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees."

Section 3 First (f) states: "In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate," etc.

Section 3 First (c) states: "The national labor organization as defined in paragraph (a) (national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act) of this section acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the

Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

The law specifically states that there shall be five labor members on said board and that the five organizations now sitting on the board shall prescribe the rules under which said labor members of the Adjustment Board shall be selected and that they shall select such members. No provision is made in the law for a sixth member. This would undoubtedly take an act of Congress although the act provides a method by which a labor organization other than those now having seats on said board may participate in the selections of said representatives. It does not provide by what method such representatives shall be selected. The United Railroad Operating Crafts has been accepted by the National Mediation Board as being organized in accordance with Section 2 of this act. Our organization admits members of all five crafts; brakemen, switchmen, conductors, engineers and firemen. If certified under Section 3 First (f) to participate in the selection of labor board members, would our organization be permitted the privilege of participating in the selection of all five members of said board? The Act is very indefinite on this point. Furthermore, it would seem to me impossible for a sixth organization to participate in the selection of said members whose very appointment is designated under the Act by an organization or association thereof and in accordance with its respective constitutions. Again, in the event that our organization, or any organization for that matter, is so certified to

participate in the selection of said labor members, how, when or where would or could this be done? Please advise.

Gratefully yours,

J. P. CARBERRY
Administrator of Affairs

JC/mb
oeiu-28-afl

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

Washington

September 13, 1954

Mr. J. P. Carberry
Administrator of Affairs
United Railroad Operating Crafts
Transportation Building
608 South Dearborn
Chicago 5, Illinois

Dear Mr. Carberry:

This is in reply to your recent letter asking certain questions regarding the Railway Labor Act. The Act does not provide for administrative interpretations of its meaning, but I am glad to furnish you with general information regarding the selection of labor members of the National Railroad Adjustment Board.

Organizations desiring to participate in the selection of labor members have in the past requested recognition of their eligibility from the organizations already recognized as participants. In this connection, you may wish to

write to Mr. A. E. Lyon, Secretary of the National Railway Labor Organizations Qualified to Participate in the Formation of the National Railroad Adjustment Board, 10 Independence Avenue, S. W., Washington, D. C., and request information regarding application for recognition.

Only in the event a dispute arises as to recognition, as you state, are procedures specified in the Act to determine eligibility. For your information, I am enclosing a copy of the latest decision of the Secretary of Labor in passing on the merit of a participation claim under section 3 First (f) of the Act, in the matter of The American Railway Supervisors Association, Inc. You will note that under the Act, this finding of the Secretary is transmitted to the National Mediation Board as a preliminary to final action of another body on the question of eligibility.

When the eligibility of a labor organization is recognized, it participates in the selection of the members of the National Railroad Adjustment Board under rules of procedure set up by the labor members, including the method of designating members of the various Divisions. You may wish also to take this matter up with Mr. Lyon. The Act does not contemplate that every organization participating in the selection of members of the Board will have a representative on the Board, since the labor membership of the Board is set at 18 and under the terms of the Act the number of organizations which may participate in the selection of members is unlimited. At the present time 25 organizations are recognized as participants.

I trust this information will be helpful to you.

Yours very truly,

JAMES P. MITCHELL
Secretary of Labor

Enclosure

UNITED RAILROAD OPERATING CRAFTS
TRANSPORTATION BUILDING
608 South Dearborn - Chicago 5, Illinois

Feb. 7, 1955

James P. Mitchell, Sec. of Labor
U. S. Department of Labor
Washington, D. C.

Dear Mr. Mitchell:

As President of the United Railroad Operating Crafts, an Organization of Railroad Operating Employees, organized under the provisions of the Railway Labor Act, I have been instructed by our International executive Board to again advise you that our organization wishes to participate in the selection of the proper labor member of the Railway Adjustment Board, first division.

In my first notification to you of this desire which took place several months ago, you informed me that it would be necessary for me to establish the fact that an actual dispute existed between the organization I represent and the present members of the Board. Perhaps you are aware that we have been engaged in several legal disputes which would have determined, had the Courts had jurisdiction, to decide whether or not the United Railroad Operating Crafts were National in Scope. In these disputes, all the present members of said Adjustment Board, first div, opposed our position.

The same Adjustment Board has already rendered a decision in the so called Hanson Case that the United Railroad Operating Crafts did not comply as an Organization National in Scope.

The purpose of this communication is to indicate to you that an actual dispute exists between the Organiza-

tion I represent and the majority of the present members of the Adjustment Board, first div. If I can be of any further assistance in further clarification of this matter, please advise.

Most Sincerely Yours

J. P. CARBERRY, President
United Railroad Operating Crafts

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

Washington

March 3, 1955

Mr. J. P. Carberry, President
United Railroad Operating Crafts
Transportation Building
608 South Dearborn
Chicago 5, Illinois

Dear Mr. Carberry:

This is in reply to your recent letter regarding the request of the United Railroad Operating Crafts union to participate in the selection of labor members of the National Railroad Adjustment Board.

Under Section 3. First (f) of the Railway Labor Act the Secretary of Labor has authority to investigate disputed claims of unions to be recognized as selectors. An investigation is not started, however, until evidence has been submitted to the Secretary showing that a dispute exists between the claimant union and the labor unions now authorized to be Board members selectors.

The decisions by the National Railroad Adjustment Board mentioned in your letter involved a different question, namely, whether your union is "national in scope" within the meaning of the union shop provision of the Act. Further, the Board's decisions would not necessarily represent the views of the labor unions qualified to select labor members of the Board.

In my previous letter to you, I enclosed a copy of the Secretary of Labor's decision of September 8, 1953, on the merit of a participating claim of the American Railway Supervisors, Inc. I believe this might be a helpful guide as to the type of evidence which would establish the existence of a dispute under Section 3. First (f). The evidence in that case included copies of requests made by the claimant union to the selector organizations for participation in selection and of the responses made to such requests.

I believe that this letter should clarify the technical jurisdictional requirements upon which my action in matters under the Railway Labor Act depends.

Sincerely yours,

JAMES P. MITCHELL
Secretary of Labor

RAILWAY LABOR EXECUTIVES' ASSOCIATION

A. E. Lyon, Executive Secretary-Treasurer
10 Independence Ave., S. W.
Washington 24, D. C.

July 15, 1955

Mr. J. P. Carberry, President,
United Railroad Operating Crafts,
Room 444, 608 South Dearborn Street,
Chicago 5, Illinois

Dear Sir:

I have received your letter dated May 27, 1955, addressed to me as "Secretary, National Railroad Adjustment Board."

I am not and have never been secretary of the National Railroad Adjustment Board and the Board is not and has never been located in Washington, D. C., as I would assume that all persons connected with a railroad labor organization would know.

I will send a copy of your letter to the chief executive officers of the railroad labor organizations recognized as qualified to participate in the selection of the labor members of the National Railroad Adjustment Board. I assume that they will give it their attention when they hold a meeting. There is no particular form of application for recognition.

Your truly,

A. E. LYON

cc: Honorable James P. Mitchell,
Secretary of Labor

Chief Executives of Railroad
Labor Organizations

NATIONALLY ORGANIZED RAILWAY LABOR ORGANIZATIONS

QUALIFIED TO PARTICIPATE IN THE FORMATION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD

September 30, 1955

Mr. J. P. Carberry, President
United Railroad Operating Crafts
608 So. Dearborn St.,
Chicago 5, Illinois

Dear Sir:

By letter of May 27, 1955, you made your request that the United Railroad Operating Crafts be granted the right to participate in the selection and designation of the labor members of the National Railroad Adjustment Board. Under date of August 29, 1955, you were informed that a meeting of the executive officers of all the Nationally Organized Railroad Labor Organizations qualified to participate in the selection of labor members of the National Railroad Adjustment Board was to be held at the Hamilton Hotel, Washington, D. C., beginning at 10 A. M. on September 30, 1955, and that the meeting was called specially to consider the subject matter of your letter. You or your representative was invited to appear at the meeting and present your position.

Neither I nor any of the executive officers have received from you any communication acknowledging or referring to the invitation sent you on August 29, 1955. The meeting which you were asked to attend convened at the time and place scheduled and remained in session for a considerable time awaiting your appearance. Eighteen of the twenty-three participating organizations were

represented. You did not appear nor did any one from your organization appear on your behalf or as representing you.

Consideration of the question of whether your organization is national in scope within the meaning of Section 3 of the Railway Labor Act must be based on adequate information laid before us. We have no such information. Consequently the method we follow in securing such necessary information is that suggested to you in my letter to you of August 29, 1955, namely, that you or your representative appear at a meeting of the executive officers to present your position and evidence on which you rely.

Should you indicate your desire to appear, the matter will be considered at our next meeting.

Very truly yours,

A. E. LYON
Secretary.

October 7, 1955

Mr. A. E. Lyon

Railway Labor Executive Association
10 Independence Avenue Southwest
Washington 24, D. C.

Dear Sir:

This is in reply to your letter of September 30, 1955, wherein you advise me of the following:

No. 1—that under date of August 29, 1955, I was informed that a meeting of the Executive Officers of all the National Organized Labor Organizations qualified to par-

ticipate in the selection of Labor members of the National Railroad Adjustment Board was to be held at the Hamilton Hotel, Washington, D. C., beginning at 10:00 A. M., on September 30, 1955, and that the meeting was called especially to consider the subject matter of your letter. Also, my representative was invited to appear at the meeting and present my position.

No. 2—The meeting at which I was asked to attend convened at the time and place scheduled and remained in session for considerable time awaiting my appearance. Eighteen of the twenty-three participating organizations were represented. Neither I, nor anyone from my organization appeared at said meeting.

No. 3—Should I indicate my desire to appear at a meeting of the Executive Officers the matter will be considered at your next meeting.

In reply to Paragraph #1—I did not receive your notification of August 29, 1955 and it is rather difficult for me to believe that a special meeting of the body was called to consider the subject matter of my September 30, 1955 request.

In reply to Paragraph #2—Again, it is unreasonable for me to believe that the meeting referred to was called with no knowledge or assurance that I would put in an appearance, especially in view of the fact that eighteen of the twenty-three participating organizations had to send representatives to various geographical locations.

In reply to Paragraph #3—Apparently, your next meeting will not be a special meeting to consider the question of whether or not the organization I represent is National in scope within the meaning of Section 3 of the Labor Act. However, this particular subject matter will be considered in the event I desire to appear before the body. It is my desire to appear at your next meeting, and I suggest that notification thereof be sent to me in the same manner in which I receive your letter of September

30, 1955; namely, Registered Mail—Return Receipt Requested. I would appreciate your sending copy thereof to Mr. J. L. Norton, Chairman, U.R.O.C., National Executive Board, 455 South 12th Street, San Jose, California.

Please advise as to whether your letter of notification under date of August 29, 1955, was sent to me, Registered Mail, Return Receipt Requested.

Very truly yours,

J. P. CARBERRY, President
United Railroad Operating

NATIONALLY ORGANIZED RAILWAY LABOR ORGANIZATIONS

QUALIFIED TO PARTICIPATE IN THE FORMATION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD

10 Independence Avenue, S.W.
Washington 24, D. C.
October 18, 1955

Mr. J. P. Carberry, President
United Railroad Operating Crafts
608 South Dearborn Street
Chicago 5, Illinois

Dear Sir:

I have received your letter of October 7. I am sending a copy of it to all those who are shown as getting a copy of this answer.

Another copy of my letter of August 29, which was addressed jointly to you and Mr. Michael Quill, is enclosed. We are certain that the letter left this office in the regular mail. It was not sent registered mail.

I assume that in due time another meeting of the organizations will be held to consider your application and you will be notified.

Yours truly,

S/ A. E. LYON
Secretary

cc: Chief Executives of Nationally Organized Railway Labor Organizations Qualified to Participate in the formation of the National Railroad Adjustment Board

Mr. C. M. Mulholland
Mr. H. Heiss
Mr. H. N. McLaughlin